

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALTONIA SHEPPARD,

Defendant-Appellant.

---

UNPUBLISHED

April 17, 2003

No. 239336

Wayne Circuit Court

LC No. 01-005048

Before: Meter, P.J., and Cavanagh and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions for attempted felonious assault, MCL 750.82 and MCL 750.92, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced him to two years in prison for his felony-firearm conviction and to one year of probation for his attempted felonious assault conviction. We affirm.

Defendant argues that the prosecutor presented insufficient evidence to support the convictions. We disagree. In reviewing the sufficiency of the evidence, this Court must view the evidence de novo in the light most favorable to the prosecutor and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

“The elements of felonious assault are (1) an assault, (2) with a dangerous weapon, and (3) with intent to injure or place the victim in reasonable fear or apprehension of an immediate battery.” *People v Wardlaw*, 190 Mich App 318, 319; 475 NW2d 387 (1991). “[A]n ‘attempt’ consists of (1) an attempt to commit an offense prohibited by law, and (2) any act towards the commission of the intended offense.” *People v Thousand*, 465 Mich 149, 164; 631 NW2d 694 (2001). The felony-firearm statute, MCL 750.227b, provides, in part, that “[a] person who carries or has in his or her possession a firearm when he or she commits or attempts to commit a felony . . . is guilty of a felony, and shall be imprisoned for 2 years.” “It is possession, not use, of a firearm during the commission of a felony that satisfies the requirements of the statute.” *People v Beard*, 171 Mich App 538, 546; 431 NW2d 232 (1988).

The record in this case supports defendant's convictions. The victim, Daryl Ivy, testified that defendant walked into his backyard and pointed a .22 caliber gun towards his chest. The gun had seven bullets in it at the time. The victim was concerned for his personal safety. By pointing a gun towards Ivy's chest, defendant attempted to assault Ivy with a dangerous weapon and performed an act towards the commission of the offense. It could reasonably have been inferred that defendant intended to place the victim in fear or apprehension of an immediate battery. Additionally, since defendant was found to have possessed a firearm during his commission of the attempted felonious assault, we conclude that sufficient evidence existed for the court to have found defendant guilty of felony-firearm.

Defendant also argues that his sentence of one year of probation was excessive because he had no prior felonies and is a senior citizen. We disagree.

The trial court sentenced defendant to two years for his felony-firearm conviction because that is the mandatory sentence for a felony-firearm conviction. MCL 750.227b. Attempted felonious assault carries a statutory maximum penalty of two years. MCL 750.92. As noted, the trial court sentenced defendant to one year of probation for the attempted felonious assault conviction.

The legislative guidelines apply to this offense because it was committed after January 1, 1999. MCL 769.34(2). Felonious assault is a crime against a person and is in class F. MCL 777.16d. Under MCL 777.19, if a crime is in class F, the attempt to commit the crime is to be considered within class H. MCL 777.19(3)(b). Therefore, according to MCL 777.69, the minimum sentence range for defendant's conviction was zero to three months. Intermediate sanctions *shall* be imposed if the upper limit of the recommended minimum sentence range is eighteen months or less, unless the court states on the record a substantial and compelling reason to sentence the individual to the jurisdiction of the department of corrections. MCL 769.34(4)(a). "'Intermediate sanction' means probation or any sanction, other than imprisonment in a state prison or state reformatory, that may be lawfully imposed." MCL 769.31(b). An [i]ntermediate sanction includes "[p]robation with any probation conditions required or authorized by law." MCL 769.31(b)(ii).

The trial court was required to impose an intermediate sanction upon defendant. Defendant was sentenced to a one-year term of probation. Defendant's sentence is in accordance with the above statement and is not excessive merely because it must be served consecutively to his mandatory felony-firearm sentence. Moreover, the sentence of probation is proportionate to the circumstances surrounding the offense and the offender.

Affirmed.

/s/ Patrick M. Meter  
/s/ Mark J. Cavanagh  
/s/ Jessica R. Cooper